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WHITE-HALL,
Febr. 25th. 1687.

Sunderland P.

A' 14 5 cm.

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THE

Legality of the Court

HELD BY

His Majesties

Ecclesiastical Commissioners,

DEFENDED.

Their Proceedings

No ARGUMENT

Against the Taking Off

Penal Laws & Tests.

[Henry Care]

LONDON,

Printed, and are to be Sold by *Richard Janeway*, in *Queens-Head-Alley* in *Pater-Noster-Row*.

MDCLXXXVIII.

XUM

THE

Legality of the Court

Held by

His Majesties

Ecclesiastical Commissioners,

DEFENDED.

THE Manifest Design of our Churchmen's Out-cries against His *MAJESTIES Ecclesiastical Commission*, being to insinuate into the *Mobile*, That the KING, notwithstanding the solemn Promises he has made to the Church of *England* intends nothing less than Her Ruin; I cannot forbear adding some Considerations to what the *Vindicator* of the *Proceedings of His MAJESTY's Ecclesiastick Commissioners* hath said on this Subject. And

thus much I the rather do, becauſe I find, that the *Laſt* thing they aim at, is the ſetting the Nation againſt the Taking off Penal Laws and Teſts. But, that I may the more Succeſsfully go through this Province, it will be neceſſary, that I examine what has been oppoſed to the *Legality* of the Court.

His *MAJESTY* has Promiſed to Protect the Church of *England*, as by Law eſtabliſhed, and hitherto has done Nothing that interferes with this moſt Gracious Promiſe; for, it muſt be acknowledged, that a Correcting the Diſobedient Members of a Church, is not a Deſtroying, but rather an uſing proper methods to preſerve and ſecure it.

The Church of *England* is a Body-Politick, compact, and compounded of many, and almoſt infinite ſeveral, and yet well-agreeing Members, of which the KING is *Head*, inſtituted and furniſhed with plenary and entire Power, Prerogative, and Juriſdiction, to render Juſtice and Right to every part of this Body, of what Eſtate, Degree, and Calling ſoever he be.

The Exerciſe of this *Power* and *Prerogative*, according to the Eccleſiaſtick Laws of this Realm,

Realm, is the Great Engine, uſed for the Defence and Security of this Church. The Diſtribution of Juſtice, whether by encouraging thoſe that do well, or puniſhing the Offenders, is the true way to ſupport a Body-Politick.

Thus much, I preſume, all men of Sence will yield, from whence it is eaſily inferr'd, That on my Clearing the *Legality* of the Commiſſion [for nothing has been (that I do know) objected againſt the Defence of its Proceedings] it muſt be moreover granted, that His Majeſty has done the Church of *England* no harm.

My preſent Work then, is, to conſider, What has been urged againſt the *Legality* of this Court? The Author of a Letter to the Vindicator will have the Queſtion to be, " *Whether or no by the Laws of this Nation, as they* " *now ſtand, the KING's Eccleſiaſtical Juriſdiction,* " *may be delegated to Commiſſioners?* Or, Whe- " Eccleſiaſtical Commiſſioners derived their " Authority from His Majeſty, by vertue of " the Firſt *Elizabeth* only, and not upon the " ſcore of any Prerogative in the Crown, " preceding to that Act, whereby our Kings

" might appoint Commiſſioners in ſuch Ca-
" ſes, *ad libitum*, is the ſingle Queſtion, upon
" which the Validity or Invalidity of the
" preſent Commiſſion will turn?

To this the Author anſwers, " That it is
" not an Expreſſion that might drop from my
" Lord *Coke*'s Pen, that will determine ſo
" weighty a point as this, eſpecially it being
" a queſtion that depends upon ſome know-
" ledge of *Antiquity*, which my Lord *Coke* was
" very little acquainted with: Beſides, he
" adds, That my Lord *Coke* never tells us,
" that our King's, by vertue of their ancient
" Eccleſiaſtical Juriſdiction, could appoint
" any Commiſſioners.

After this, the Author goes on to let us know what the ancient Juriſdiction Eccleſiaſtical was, boldly affirming, that no Eccleſiaſtical Juriſdiction was anciently delegated to Commiſſioners; For, ſaith he, " Com-
" miſſions are not ſuch Arbitrary things as
" ſome miſtaken Men do fondly imagine.
" And how plauſibly ſoever it be ſaid, *That*
" *what Power a Man has in himſelf, he may de-*
" *legate unto another*; Yet this difference muſt
" be admitted betwixt Perſons Commiſſio-
" nated

" nated by the KING in Matters of Go-
" vernment, and Perſons authorized by pri-
" vate men, to act for them, and in their
" ſtead, *viz.* That private men may by Law
" do thoſe things in Perſon, which they im-
" power others to do for them. But the
" KING Commiſſionates Perſons to do
" what Himſelf cannot by Law do in
" Perſon.

This is the Subſtance of what our Author oppoſes to what the *Vindicator* had ſaid of the *Legality* of this Court. And in my **Reply**, no more is needful, than to ſhew,

1. *That in the Sence of the Church's great Archbiſhop, the KING may do by Law thoſe things in Perſon, which He impowers Commiſſioners to do for Him.*

2. *That before the* 1 Eliz. *the Kings of* England, *by the Common Law, might grant out Commiſſions.*

3. *That notwithſtanding any thing contained in the* 16 Car. 1. *or* 13 Car. 2. *he KING may do ſo ſtill.*

4. *That*

4. *That His Majesty may exercise this Prerogative in Matters Ecclesiastical, in a more ample manner than yet He has done*; and *therefore seeing he doth not, it's manifest, That His Majesty designs no Hurt to the Church of* England.

To the *First*, I will only insist on what is affirm'd by Archbishop *Bancroft*, the *Malleus Puritanorum*, the great Champion of our English Church, who was President of the Convocation called in the First year of K. *James* 1. and stifly insisted on the imposing the three Articles, and on a Depriving all that disobeyed. This Great man, the Church of *England*'s Darling, expresses himself most fully in these Words, as Sir *Edward Coke* reports.

Lib. 12. Mich. 5 Jac. *Prohibitions de l'Roy.*

" Upon *Sunday* the 10*th*. of *November*, the " KING, (upon Complaint made to him " by *Bancroft* Archbishop of *Canterbury*, con- " cerning Prohibitions) was informed, That " when question was made of what Mat- " ters the Ecclesiastical Judges have cogni- " zance, either upon the Exposition of the " Statutes concerning Tythes, or any other " thing Ecclesiastical, or upon the Statute

" of

" of 1 *Eliz.* concerning the High Commiſſi-
" on, or in any other caſe, in which there
" is not expreſs Authority in Law, *the KING*
" *Himſelf may Decide it in His Royal Perſon,*
" *and that the Judges are but the Delegates of the*
" *KING*; and that the KING may take
" what Cauſes he pleaſe to determine, from
" the Determination of the Judges, and may
" determine them Himſelf. And the Arch-
" biſhop ſaid, It was clear in Divinity, that
" ſuch Authority belongs to the *KING* by
" the Word of GOD.

Nothing can be more expreſly oppoſite to what the Author of the Letter affirms: He ſaith, that *The KING cannot by Law do that in Perſon which He impowers others to do.* But the Archbiſhop is poſitive, That the *KING* can do it in Perſon, yea, that thus much is ratified by the Holy Scriptures, and therefore is out of the power of humane Laws to alter. If then there be any *Truth* in this *Church-man's* Divinity, there is no force in what the *Author* offers for Law. But,

Secondly, The thing I chiefly inſiſt on, is this, *That before the Firſt of* Elizabeth, *the Kings of* **England** *might grant out Commiſſions.*

In

Coke Rep. Lib. 5.

In *Caudries* Caſe, after great and long Deliberation and Conſultation, the Judges reſolved, "That the Act of the Firſt "year of the late Queen, concerning Ec- "cleſiaſtical Juriſdiction, was not a Sta- "tute *Introductory* of a New Law, but *De- "claratory* of the Old; which appeareth as "well by the Title of the ſaid *Act*, *viz.* "*An Act reſtoring to the* CROWN *the An- "cient Juriſdiction over the State Eccleſiaſtical "and Spiritual*, &c. As alſo, by the Body "of the Act, in divers parts thereof. For "that Act doth not annex any Juriſdiction "to the CROWN, but that which in "truth, or of Right, ought to be by the "*Ancient* Laws of the Realm, parcel of "the *KING*'s Juriſdiction, and united to "his Imperial Crown, and which Lawfully "had been, or might be exerciſed within "the Realm.

Thus you ſee the Judges are clear in their Opinion, that the *Firſt of Elizabeth* is not Introductory of a New Law, but Declaratory of the Old: And thus much in the General the *Author* of the Letter will grant

grant me, but then he will by no means yield, That our *KINGS*, by vertue of their Ancient, Inherent, and Primitive Eccleſiaſtical Juriſdiction, might *Delegate* to Commiſſioners the Exerciſe thereof: However, if we obſerve what was further reſolved by theſe Judges, we ſhall find that 'twas thus:

" If that Act of the Firſt Year of our " late Queen, had never been made, it was " Reſolved by *All* the Judges, that the " King or Queen of *England*, for the time " being, may make ſuch an Eccleſiaſtical " Commiſſion, as is before mentioned, by " the *Ancient* Prerogative and Law of *Eng-* " *land.*

Thus you have the Reſolution of all the Judges, againſt the Opinion of one unknown Gentleman, whether Lawyer, or no, is not clear; but had he been (though he diſcovers no ſuch thing) Learned in the Laws, I preſume, his Opinion is not to be regarded, in a Matter wherein the Judges are ſo plainly againſt him. And,

though this be enough, yet *ex abundanti*, I will add one Reſolution more of our Judges. "*Mich.* 4 *Jacob. poſt Prandium*; "There was moved a Queſtion amongſt the "Judges and Serjeants at *Serjeants-Inn*, If "the High Commiſſioners in Eccleſiaſtical "Cauſes may, by Force of their Commiſ- "ſion, impriſon any man, or no? Firſt of "all, it was reſolved by *all*, that Before "the Statute of 1 *Eliz.* c. 1. *The* KING "*might have Granted a Commiſſion to Hear and* "*Determine Eccleſiaſtical Cauſes*.. *Coke* Rep. Lib. 12.

To return to our Author, on this Queſtion, Whether our KINGS, by vertue of their Ancient Eccleſiaſtical Juriſdiction, might Grant out Commiſſions, or Delegate the exerciſe of their Power to Commiſſioners? I ſay, on this Queſtion (as this Gentleman grants) the Validity or Invalidity of the preſent Commiſſion will turn: that is to ſay, If by the ancient Laws our KINGS might Grant out Commiſſions, then the preſent Commiſſion is valid; But it has been Reſolved by all the Judges again and again, that by the Ancient Law before

before the First of *Elizabeth*, the KING might Grant out Commissions. *Ergo*, the present Commission is valid, the Court is a *Legal* Court.

Though this be so very clear, yet our Gentleman is still of the Opinion, That the Statute of 16 *Car.* 1. has taken away the Commission it self, Root and Branch. I will therefore proceed to the *Third* point, *viz.*

Thirdly, That *notwithstanding any thing contained in the* 16 Car. 10. *or* 13 Car. 2. *the KING may still Grant out Commissions.* For, if the Power of Granting this Commission be, as our Church-of-*England*-Lawyers declare, a part of the *Ancient* Ecclesiastick Jurisdiction, it is, notwithstanding any thing in the 16 *Car.* 1. or 13 *Car.* 2. still so. For it is expresly declared in this 13 *Car.* 2. *c.* 12. That **Neither the said Act, nor any thing therein contained**, DOTH, or Shall **take away any Ordinary Power from the Arch-bishops, Bishops,** &c. **but that** they, **and** every

Person above-named, exercising Ecclesiastical Jurisdiction, may proceed, and execute all manner of Ecclesiastical Jurisdiction, belonging to the same before the making of the 16 Car. 1. And if we look back, and observe who those Persons are that are above-named, we shall find them to be not only Archbishops, and Bishops, but *Vicar-Generals*, or any other person or persons whatever, exercising Spiritual or Ecclesiastical Power by any Grant, Licence, or Commission of the KING's Majesty; and if the Ecclesiastical Power be restored to *Vicar-Generals*, and to the KING's Commissioners, then the Power *extraordinary* is restored too, for 'twas an Extraordinary Power that belonged to them, which can no sooner be yielded, but 'twill follow, that no more Power is taken from *Vicar-Generals*, and the KING's Commissioners, than what was taken from Archbishops, Bishops, *&c.* which is further confirmed by that Clause, in which it is Declared, That the KING's *Supremacy* in Ecclesiastick affairs shall not be abridged or diminished;

On

On which I thus argue : That that Sence of this Law, by which the KING's Eccleſiaſtick Supremacy is abridg'd or diminiſhed, is not the true Church of *England* Sence. But the holding that all *extraordinary* Juriſdiction is taken away, abridges the KING's Supremacy; For, as our Church-men will have it before this Statute was Enacted, it's moſt manifeſt, that the Power of making Vicar-Generals and Commiſſioners, for the exerciſe of Extraordinary Juriſdiction, and ſummoning Men out of their own Dioceſs, belong'd to the King's Supremacy Eccleſiaſtical, and therefore it ſtill doth appertain to it, which cannot be ſatisfied by Commiſſioners of Delegates, and Commiſſioners to viſit in places exempt ; For as I have already obſerved, *Vicar-Generals*, whoſe Juriſdiction is Extraordinary, are named amongſt the reſt. But to follow our Author,

If we enquire after the Special Reaſon that moved Queen *Elizabeth* to ſet up the *High-Commiſſion Court*, we ſhall find, that though it was to the end ſhe might *Deprive*

prive the Popiſh Prieſts, yet, by the Inſtigation of the Clergy, it was, for many years together, turned againſt the Proteſtant Diſſenters; and, according to Church-of-*England*-Law, it may as well be turned againſt themſelves: For the Powers, Authorities, and Juriſdictions annexed to the Imperial CROWN of *England*, were for the Redreſſing, Ordering, Correcting, Reſtraining, and Amending any Offences, Contempts, and Enormities whatſoever, which by any manner of Spiritual Authority and Juriſdiction, ought to be reformed; and therefore, if a Church-of-*England*-man be guilty of any ſuch Offences, Contempts, or Enormities, he falls under the Eccleſiaſtick Cenſure, as well as a *Roman Catholick*, or Proteſtant Diſſenter; and for the ſame Reaſon, One Prince exerciſes this Authority againſt Offenders of one ſort, another Prince may uſe the ſame Power, for the amending the Offenders of the other Denomination.

And, Who can conſider how our Churchmen, that they might the more ſeverely handle

handle the Proteſtant Diſſenter, have exalted the Prerogative, and not wonder that they ſhould complain on the milder Exerciſes of it? But whatever they may think, it's impoſſible for them to open their Mouths in this matter, unleſs they bring upon themſelves the greateſt *Odium* and Contempt imaginable; for when they blame the preſent Commiſſioners for what they have done againſt the Biſhop of *London*, and *Magdalen* Colledge, they do condemn themſelves for exerciſing the greateſt Severities againſt the *Puritans*, contrary (as now they themſelves will have it) unto all Law; For from what has been already ſaid, it is apparent, That the ſame Power His Majeſty's Predeceſſors exercis'd, belongs unto His Majeſty, and that gives Strength to each Horn of the *Dilemma*.

In a word, then our Churchmen muſt confeſs, they have been guilty of a very great errour, in turning the Royal Thunder againſt the Old *Puritans*, in Q. *Elizabeths* and K. *James* the Firſt's days: Or, that they acted very Righteouſly in what they have

have done against them. If the *Former*, why do they not publish so much to the World? Why do they not confess, that their Forefathers have sinned, and gone astray, and that the *Puritans* were most Unjustly persecuted by their beloved Mother? If the *Latter*, if the Church of *England* in those days did but what was Just, seeing many Hundred of the *Puritans* were spoiled of their Benefices by the Royal Power, the *KING* may as Righteously proceed on the same bottom.

Fourthly, The *Fourth* thing to be done, is this, *viz. That His MAJESTY may exercise His Prerogative in Matters Ecclesiastical, in a more ample manner than yet He has done.*

The Author of the Letter affirms, That the Power of making Canons, for the Government of the Church, was no otherwise in the CROWN than the Power of making Temporal Laws; But the mistake in this place is as great as some others he is faln into, about *Appeals* and *Investitures*; the first of which, notwithstanding what he

he ſaith to the contrary, is to the *KING* without a Parliament, and decided by his Delegates or Commiſſioners of Review; the Laſt by the KING ſolely, who, by the delivery of the Staff and Ring, did uſually inveſt, as our Hiſtories abundantly confirm. In like manner touching Laws about Rites and Ceremonies, it lies in the KING's Power, without a Parliament, to make 'em. So ſaith Dr. *Zouch*, and Dr. *Coſin*, and there is an Act of Parliament, expreſly recognizing this Power to be in the KING; the Words of which are, **If there ſhall happen any Contempt or Irreverence to be uſed in the Ceremonies or Rites of the Church — the Queen's Majeſty, with the Advice of her Commiſſioners in Cauſes Eccleſiaſtical, or Metropolitan, may Ordain and Inſtitute ſuch further Ceremonies or Rites, as may be moſt for the Advancement of GOD's Glory, the**

Rex poſſit novas Leges condere circa ceremonias & ritus cum conſilio Metropolitani vel Commiſſariorum in Cauſis Eccleſiaſticis. Zouch. Deſcrip. Jur. Eccleſ. Par. 1. Sect. 3. Coſ. T. 6.

Edifying of his Church, and due Reverence of Christ's Holy Mysteries and Sacraments.

1 *Eliz.* c. 2.

And as the *KING*, with His Ecclesiastical Commissioners, may make New Laws about Ceremonies, so, without a Parliament, He may make Orders or Constitutions, for the Government of the Clergy, and deprive the Disobedient.

Thus much is affirm'd by those Protestant Divines, who have Written in Defence of the *KING*'s Supremacy, particularly by Dr. *Harris*, in Answer to *Becanus* the Jesuit, where he is expres in assuring us, "That the Right and Power by Regal Au-"thority to make *Church-Laws*, as, that "*GOD should not be Blasphemed*; that *GOD* "*should be pacified in a Fast*, and *Honoured in a* "*Festival day*, and all such as we read to have "been made in the *Code*, *Authenticks*, and *Ca-*"*pitulars* by *Constantine*, *Theodosius*, *Justinian*, "and *Carolus Magnus*, belongs to our "Kings.

"More-

" Moreover, to *Delegate* ſuch as ſhould " judge of the Laws ſo made,

" *Touching Perſons*

" To adminiſter Juſtice to all of all ſorts——
" To deprive the High-Prieſt (if he do de-
" ſerve) of his Prieſthood.

Theſe by Divine Right, are the Rights — of Regal Primacy, *viz.* whereby the KING may

1. *Be called the Supreme Head of the Church.*

2. *Call Councils, and preſide in them.*

3. *Make Laws Eccleſiaſtical.*

4. Conſtitute, *and* Depoſe *the* High-Prieſt.

5. *Bind His Subjects, by Oath, to Keep the Laws by Him made.*

" To conclude, Hereby may the Adver-
" ſaries ſee that *Regal Primacy* is founded on
" the Scriptures, and propagated from the
" Firſt Religious Kings under the Old, to the
" Firſt Religious Emperors and Kings, and
" ſo to Our Sovereign Lord K. *JAMES*,
" under the *New* Teſtament, and in that
" long diſtance of time nothing impaired or
" diminiſhed. So far Dr. *Harris*.

But before many Noble-men, Archbiſhops, and Biſhops, and the Juſtices and Barons of the *Exchequer*, it was agreed, That the *KING*, without a Parliament, may make Conſtitutions for the Government of the Clergy, and that ſuch a Deprivation, *Ex Officio*, without a Libel, is good.

Beſides, it muſt be further obſerv'd, That as it was held both by the Church-

of

of *England* Divines, and Lawyers, to be in the Power of the *KING* to make Conſtitutions for the Government of the Clergy, and Deprive the Diſobedient: In like manner our *KINGS* acted accordingly, and impos'd a Subſcription to the Three following Articles. *Noyes* Reports, Fol. 100.

" I. That the *KING*'s Majeſty, " under *GOD*, is the Only Supreme " Governour of this Realm, and of " all other His Highneſſes Domini- " ons and Countries, as well in all " Spiritual or Eccleſiaſtical things or " cauſes, as Temporal; and that no " Forreign Prince, Perſon, Prelate, " State, or Potentate, have or ought " to have any Juriſdiction, Power, " Superiority, Preheminence, or Au- " thority Eccleſiaſtical, or Spiritual, " within His Majeſties ſaid Realms, " Dominions and Countries.

II. That

" II. That the *Book of Common-*
" *Prayer*, and of *Ordering of Biſhops*,
" *Prieſts*, and *Deacons*, containeth in
" it nothing contrary to the Word
" of *GOD*, and that it may Lawful-
" ly be uſed, and That He Him-
" ſelf will uſe the Form in the ſaid
" Book, preſcribed in publick Prayer;
" and none others.

" III. That He alloweth the *Book*
" *of Articles of Religion*, agreed upon
" by the Archbiſhops, and Biſhops
" of both Provinces, and the whole
" Clergy in the Convocation hol-
" den in *London*, in the Year of our
" Lord God, 1562. And that He
" acknowledgeth all and every the
" Articles therein contained, being in
" number Nine and Thirty, beſides
" the *Ratification* to be agreeable to
" the Word of *GOD*. To

To these three Articles all Persons received into the Ministry, were bound to Subscribe in these Words;

I N. N. *do willingly, and* ex animo, *Subscribe to these Three Articles above-mention'd, and to all things that are contained in them.*

This Subscription was imposed by the Regal Authority, without a Parliament, and many Hundreds who could not Subscribe, were, to the Ruin of them and their Families, actually deprived. And although this Subscription was exacted, during the whole Reign of *James* I. and *Charles* I. yet until the Restauration of *Charles* the 2*d*. it had never a Parliamentary Establishment.

Seeing then, it's past doubt, That His *MAJESTY's* Supremacy is as ample as that of any of His Royal Predecessors, what Q. *Elizabeth* and K. *James* the First have done, that His present *MAJESTY* may now do, and without a Parliament, Command a Subscription to other New Articles, and Deprive the Disobedient.

To

To instance in one Article: His *MAJESTY* may Command all the Clergy throughout this Kingdom, to give in their *Assent, and Consent to every thing contained in His late Gracious Declaration of Indulgence*, and *Deprive all that Disobey.*

The power of Making new Articles, and requiring Subscription, His *MAJESTIES* Royal Predecessors have exercis'd, and the same His *MAJESTY* may as well *now* do. For the *Matter* of His Majesties *Declaration* has greater Countenance from Scripture, than the Ceremonies can pretend to. Ay, the very *Dispensing Power* it self, is no more than what many of our Clergy have, for many Years together, preached up for Sound Doctrin.

Thus you see how the *KING* may stretch His Prerogative to an higher Peg than yet he has done; but, Would there not then be a Brave Work among our Clergy, who, on such an occasion, would be obliged to give in Assent and Consent to *Liberty of Conscience*, or submit to a Deprivation!

tion! I will ſay it again, If His *MAJESTY* by His Regal Authority, ſhould impoſe a Subſcription to His late Gracious Declaration, He might moſt Righteouſly, according to Church-of-*England*-Law, Deprive all that refuſe to Obey.

I know that of late, ſome have very confidently ſaid, That *Deprivation* is no Eccleſiaſtical Penalty, for the Benefices of which they are Deprived, is a *Property*, and by *Magna Charta*, no one can be diſſeized of it, without a Tryal by a Jury of his Peers; I will therefore, in ſhort, give you the Reſolution of our Judges in this matter, and leave it to the impartial Reader to judge, as he ſhall ſee cauſe.

"*Robert Cawdrey*, the Parſon of the "Rectory of *North-Luffenham*, in the County "of *Rutland*, was, by the Queens Eccleſia-"ſtical Commiſſioners, deprived of his ſaid "Benefice, for preaching againſt the Book of "Common Prayer, as alſo for that he re-"fuſed to Celebrate Divine Service, accor-"ding to the ſaid Book; which ſaid Sen-

" tence of Deprivation was given by the
" Biſhop of *London cum aſſenſu A. B. C. D. &c.*
" *collegarum ſuorum.* But whether the Depri-
" vation was void in Law, was ſolemnly
" and oft-times debated at Bar by Council,
" and at the Bench by the Judges, and after
" great and long deliberation and conſultati-
" on had with the reſt of the Judges, the
" Caſe was in the Term of St. *Hilary*, in the
" 37 Year of the Queen, adjudged. It was
" argued by *Cawdrey's* Counſel, That the De-
" privation was void, for his Offence was
" againſt the Firſt of *Elizabeth*, and therefore
" ought to be puniſhed according to the mo-
" deration of that Act, which was not for
" the Firſt Offence an *ipſo facto* Deprivation,
" but only the Loſs of the profits of his Ec-
" cleſiaſtical Livings for One year, and Six
" months Impriſonment. But Deprivation
" was for a Second Offence, committed after
" he had been judicially convicted of Re-
" cord by Verdict of Twelve men, or by
" Confuſion, or notorious evidence of the
" Fact. But although this was the method
" preſcribed by the Statute of 1 *Elizabeth*,
" yet, becauſe there was a *Proviſo* in the

" ſaid

"said Act, [That all and singular "Archbishops and Bishops, and eve-"ry of their Chancellors, Commissa-"ries, Archdeacons, and other Ordi-"naries having any peculiar Eccle-"siastical Jurisdiction, should have "full Power and Authority, by ver-"tue of that Act as well to enquire "in their Visitation, &c. — of all "and every the things above-men-"tioned, done and committed, or per-"petrated within the limits of their "Jurisdiction and Authority, and "punish the same by Admonition, Ex-"communication, Sequestration, or Depriva-"tion, and other Censures and Pro-"cess, in like Form as heretofore "had been used in like cases by the "Queens Ecclesiastical Laws,] It "was adjudged, That the Ecclesiastical "Judges might *Deprive* such Person, Vicar, &c. "as shall deprave or not observe the said "Book, as well for the First Offence, as "he might have done by the Censures of "the Church, and the Ecclesiastick Laws, "as if no form of punishment had been in-

" flicted by that Act, and are not bound " to purſue the Form preſcribed by the ſaid " Act, which is to puniſh the Offender, accor- " ding to the Temporal Law.

Thus the Judges have Reſolv'd it, That Deprivation is one ſort of Eccleſiaſtical puniſhment, and may be inflicted without an Obſerving the Form preſcribed by the Temporal Laws: Which is enough to ſilence the Clamours of thoſe Church-men, who now cry up Benefices to be ſuch a Property, that the puniſhment by Deprivation cannot be juſtly inflicted, unleſs the proceſs be in like Form as is uſed by the Temporal Laws.

Furthermore, as His Majeſty may exerciſe this ample Power, and not recede the leaſt from Church-of-*England* Law; even ſo, his Doing it would not interfere with his Promiſe: And, if we may judge of things by the Sentiments our Church-men have heretofore had of Deprivations, no hurt is hereby done unto their Church. For when the old *Puritans*, in *Q. Elizabeths* and *James* the First's

First's days, and the *Nonconformists* in *Charles* the Second's Reign, were Deprived, these Deprivations were esteemed by the Governing Clergy, no Damage, but a great Advantage to the Church; for, by them She was delivered from all those that differ'd from Her in a *Ceremony*. On the other hand therefore, if His Majesty should impose Subscription to the Late Declaration, though many be thereupon Deprived, yet no more harm can be done the Church of *England* now than by the former Deprivations. And if the Opinion of a very Learned and Moderate *Church-man* may be of any value, the Difference between these and the Old Deprivations, must be only this: By the Old, the most Pious, Learned, and Peaceable, that scrupled the Ceremonies, were turn'd out, to the prejudice of Religion; But by this New one, none but the Debauched, and Persecuting part of the Clergy, to whom we may impute all our Late Miseries, will be laid aside, to the advancing the Nations Peace.

If then the KING may exercise his Prerogative, and go so far, as is here said,

with-

without doing any hurt to the Church, What ground is there for the preſent *Noiſe*? His *MAJESTY*'s Commiſſioners have indeed ſuſpended One Biſhop for his Diſobedience, towards whom they have exerciſed the greateſt patience, in not proceeding to a Deprivation; And what have they done more, than amove the Fellows of one Colledge for their inſolent oppugning His Majeſties Supremacy, and a making 'em uncapable of compaſſing their bad deſigns? Where then is the leaſt Colour for the Jealouſies theſe men endeavour to beget in the minds of His Majeſties Subjects?

On the whole, Whoever will conſider how much, according to Church-of-*England*-Law, the KING may do, and yet notwithſtanding the many Provocations ſome Hot-Church-men have given Him, How little He has done? I ſay, whoever will carefully obſerve thus much, will ſee cauſe enough to conclude, That *His Majeſty*'s Clemency in the Exerciſe of His Supremacy, bears proportion to His Greatneſs.

It's amazing to obſerve, how induſtriouſly ſome of our Clergy, and their Creatures, ſtruggle; how ſtrenuouſly they labour to miſrepreſent *His Majeſty*'s moſt Glorious Deſigns, how many Seditious Pamphlets they do daily emit, and at what charges they are to propagate 'em. But yet *His Majeſty*, with the greateſt ſteadineſs purſues His Royal Purpoſes of Grace to the whole Kingdom, to all Parties in it, even to the Church of *England*, that She continue in the Enjoyment of all that is dear unto Her, ſo far as it's conſiſtent with the true peace and quiet of the other great parts of the Nation.

Let things be reſtored to the Ancient Conſtitution, let all Engliſh-men, as ſuch, enjoy the *Priviledges* that belong unto 'em: Let them all ſit down with peace under their own Vines, and be equally concern'd in the Services the Government calls for, and Encouragements it gives, and *His Majeſty* is ſatisfied.

The encloſing the Government, and narrowing it ſo, that none but Men of one Re-

Religious Perſwaſion can have a ſhare in it, hath (as woful experience teaches us) proved fatal to this Nation. It hath ſpoiled our Trade, depopulated the Kingdom, and exhauſted the Nation's Treaſure, carrying it unto a neighbouring People.

Let us then be content, that *His Majeſty* brake down the *Encloſures*, and ſet the Government on a larger bottom, that all *True Engliſh-men* may have a ſhare in it. Let Liberty and Property, and every man's Religion, be ſecured, and we ſhall ſoon be the happieſt People under Heaven.

I ſay, Let every man's Religion be ſecured, as much from Violence, as the moſt Sacred part of our Civil Liberties, for this is the thing His *MAJESTY* Deſires; and, Where then is our danger?

His *MAJESTY* offers to do what never any of His Royal Predeceſſors ever did before him, towards the eſtabliſhing his *Peoples Peace*, And ſhall we be ſo unſenſible, as not to Bleſs GOD, and accept of the Offer?

Here

Here is no *Truſting* in the Caſe. His *MAJESTY* diſcovers ſo much Sincerity and Integrity in what he ſaith, that he will leave no room for *Truſt*.

It is but to accept of a *Magna Charta*, in which our Religion is ſecured from all danger, (*which can never be ſo long as Penal Laws, and thoſe Teſts, whoſe matter is meerly Religious, be kept up,*) and we are immediately poſſeſt of all we can reaſonably deſire.

Let the ſame Inſtrument that takes away *Penal Laws* and *Teſts*, ſecure our Religion, and by the very Breath, that the one is deſtroyed, the other will be eſtabliſhed.

That a Sufficient Security may be found out, is not doubted by the moſt wiſe and thoughtful. What that is, is the part of a *Parliament* to conſider; but if we have as good, or better *Security* for our Religion; to be content to part with *Penal Laws* and *Teſts*, is both the Duty and Intereſt of every true *Engliſh-man*.

That *His Majesty* will give us as good Security as can be reasonably desired, is the Import of His Late *Gracious Declaration*, which, he has, on divers occasions, oft publickly repeated, and it hath been fully proved, That *His Majesty's Ecclesiastical Commissioners* have done nothing that is inconsistent with *It*. Whence it clearly follows, That there is nothing of Argument in our *Hot-Church-mens* Clamours, about this Courts Proceedings against the Taking off *Penal Laws* and *Tests*.

In a word, from what has been already urg'd, it's most apparent:

I. That the *Court*, held by His *Majesties* Ecclesiastical Commissioners, is, according to the Sentiments of Church-of-*England* Lawyers and Divines, a *Legal Court*.

II That the Prerogative, recognized by the Church-of-*England* to be inherent in the *CROWN*, is much larger than what His *Majesty* has yet exercised. For,

1. The

1. The KING with His Commiſſioners Eccleſiaſtical may make *New Laws* about Ceremonies; and inſtead of Three, impoſe Thirty more. The Power being lodg'd in the KING, He is the moſt proper Judge of their *Decency*, and *Number*; and for the ſame Reaſon, that Three are impoſed, if His *Majeſty* judges it meet, Thirty more may be added to the preſent Impoſition.

2. The KING with His Commiſſioners Eccleſiaſtical, may enjoyn a ſtrict Subſcription unto *New Articles*, and in the preſent juncture, require the Clergy to give in Aſſent, and Conſent unto them, on Pain of Deprivation. And if His *Majeſty* ſhould oblige our hot Church-Doctors to Subſcribe, Aſſent, and Conſent unto *Liberty* of *Conſcience*, What a condition would theſe Violent Men be plung'd into? They muſt either renounce their perſecuting Principles, or part with what is as dear unto them, *viz.* their Benefices.

3. His *Majesty* may proceed against the *Bishop* of *London* to a Deprivation; for, when ever any one falls under Suspension, it has been the Custome of the Church of *England*, stifly to insist on a Submission; and where that could not be obtained, they never stopt one point this side a *Deprivation*. Now it's plain, that it was the Bishop's Duty to obey the Mandate of his Supreme Ordinary, and suspend Dr. *Sharp*; and seeing he refused to Discharge his Duty, he was by their own Laws, justly suspended; and it's as certain, that His *Majesty* exercises the greatest Clemency, in waiting so long for his submission.

4. If His *Majesty* should deal with some of the *Magdalen*-Fellows after that manner, the Church-of-*England*-Judges advis'd King *James* the First, to proceed against the Old *Puritanes*, He might handle 'em more severely than yet his Commissioners have done. For their endeavouring to fill the Minds of His *Majesties* Subjects with *Discontents*, and *Jealousies*, is an

an Offence, Fineable at diſcretion, and very ſhort of Felony, or Treaſon in the Puniſhment.

By all which it's manifeſt, that His *Majeſty* has not ſtretched his Prerogative to the utmoſt length he might, and yet keep within the Church-of-*England* Circle, and it's alſo as clear, that by reaſon of this Power His *Majeſty* has all the Conformable Clergy under His Girdle; to which we may add, that on the account of the many Penal Laws againſt Proteſtant Diſſenters, *They* alſo are as much under the Power of their *PRINCE*; for which reaſon, we may be aſſured, that if His *Majeſty* deſign'd any thing more than the Peace and Quiet of all His People, if he had further reſolv'd to have ſet up *Popery* in Dominion, to the Ruining His Proteſtant Subjects, the only time of doing it would be before the Penal Laws and Teſts are taken off, and a *Magna Charta*, for Liberty of Conſcience is Eſtabliſhed. For *Now*, the *KING* can either *Muzzle* all the Clergy, or *Ty up* the hands of Proteſtant-Diſſenters, and get a Parliament, that ſhall ſet up *Popery*.

It's

It's not to be doubted, but that 'tis more eaſy *Now*, than it can be after a *Magna Charta* for Liberty of Conſcience is obtained; for *Then*, the perſecuting principle will be Damned, the Church of *England* will have freſh ſecurity for her ſtanding, and the *Proteſtant-Diſſenter* be deliver'd from the Awe, and Dread of Penal Laws. And every Man, whoſe deſire is more for Peace, than Broyles and Confuſions (be they *Proteſtant* or *Roman Catholick*) they will be for a continuing the *Magna Charta*.

To deliver freely my Conſcience in this caſe, it is this: His *Majeſty* deſigns to make us happy, by ſetting us all at eaſe under His Government; and the utmoſt he deſires, is, That the *Roman Catholicks* with His other Subjects, may enjoy the Free Exerciſe of their Religion, and have an equal ſhare with others in the priviledges of *Engliſhmen*: and that thus much may be compaſſed, the *King* would have Matters ſo ſetled, that it may never be in the power of any one Party to hurt the Religion of the other, and that all Parties may be ſecured from Fears and Jealouſies, His

His *Majesty* calls for the help of a *Parliament*, that in a Parliamentary-way, Men of every Religion, may have the greatest security the Wit of Man can invent for Liberty of Conscience.

All those Pamphlets therefore, that are daily spread abroad, chiefly by those, who had the greatest hand in the late *Persecution*, do hinder the Nations Peace, so far, as they obstruct this His *Majesties* most Gracious Design, and are to be consider'd as such, by all good Men, who, when they weigh things, will, I doubt not, see cause to do their utmost, that We may have such a *Parliament*, as will concurr with His *Majesty* in making us Happy.

FINIS.